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Children with Disabilities and Participation in 21st Century Community Learning Center Funded Programs

The Vermont Agency of Education has received questions about the participation of students with disabilities in 21st Century Community Learning Center (“21CCLC”) programs. The purpose of this guidance is to set clear expectations.

Vermont’s 21 CCLC programs strive to be inclusive on behalf of all children and youth. “Inclusion” refers to attitudes and practices that support students with disabilities, even significant disabilities, and provide all students the opportunity to participate in curricular and extracurricular activities. Three federal laws provide the legal foundation for inclusion in 21st CCLC programs: Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA), and the Individuals with Disabilities Education Act (IDEA). Under these laws, schools have a legal obligation to provide case-by-case assessments of students with disabilities; make reasonable modifications in policies, practices and procedures; and ensure communication access for students (or their family members) with disabilities.

Under Section 504, a child with a disability is entitled to an equal opportunity to participate in 21CCLC programs. [34 C.F.R. § 104.37]. If a school or supervisory union operates or partners to operate a 21CCLC program, a parallel provision applies for children who are IDEA-eligible. [34 C.F.R. § 300.107 and 16 V.S.A. 2360.2.9(1)]. 21CCLC programs must not discriminate on the basis of disability, and must provide reasonable accommodations, modifications, and supports necessary to allow children with disabilities an equal opportunity for participation. Such accommodations, modifications, and supports must be at no cost to the child’s family.

If the child is IDEA-eligible, the child’s IEP and/or section 504 team (504) is to consider whether the child needs “supplementary aids and services” and “program modifications or supports for school personnel” necessary for the child to “participate in extracurricular and other nonacademic activities.” [16 V.S.A. 2363.7(c)(2)]. A 21CCLC program operated by or with a district or supervisory union would meet the IDEA definition of “extracurricular and other nonacademic activities.” [16 V.S.A. 2360.2.9(2)]. The district or supervisory union must ensure that all 21CCLC staff are aware of these accommodations, modifications, and supports, including how to implement them. [34 C.F.R. § 300.323(d) and 16 V.S.A. 2363.9(a)(b)].

If these accommodations, modifications, and supports are listed on the IEP, then the District or Supervisory Union may use special education resources to provide them. If a child’s accommodations, modifications, and supports are not listed on an IEP, they are supported with 21CCLC funds, other agency funds, or, if a school district sponsors or partners with the program, general funds.

If an IDEA-eligible or 504-eligible child, even with the provision of supplementary aids and services, is unable to participate in 21CCLC programming or is substantially disruptive to the 21CCLC program, then the child's participation in the 21CCLC is not appropriate. Disability law would exclude children who pose a "direct threat" to others or whose presence would be "a fundamental alteration" of the program. In that case, however, the child's IEP or 504 team will determine the nature and extent of the alterations and or accommodations, if any, that the child will receive.

It is important that 21CCLC staff participate in IEP or section 504 meetings for students wishing to access 21CCLC programs. If schedules are a problem, the 21CCLC staff may participate remotely, such as by conference call. The cost of 21CCLC staff participation in IEP or 504 team meetings is an appropriate use of 21CCLC funds.

The following examples illustrate these concepts

1. Abby, a 504-eligible student, has asthma and wants to participate in a 21CCLC program. The program operator says that Abby will not be able to participate because of "liability issues." This is impermissible disability discrimination because the program operator did not consider what actions to take, if any actions are necessary, to provide Abby with an equal opportunity for participation in 21CCLC programming. Additionally, any determinations regarding placement and accommodation must be determined by a team of knowledgeable individuals (such as the 504 team) – not one individual.

2. Benjamin is blind and has an IEP. He needs text in an alternate format. He wants to participate in a 21CCLC program. The program has stated that Benjamin's parents must pay for the alternate formats for 21CCLC written materials. This is improper cost-shifting to the parent. Any excess costs must be paid by either the 21CCLC program or from IDEA funds, depending on the content of Benjamin's IEP. If Benjamin uses equipment during the school day to assist in assimilating information, such as a Braille reader, then that equipment must be accessible in the after-school program as well.

3. Carlos has an IEP that provides for a 1:1 paraeducator to assist with complex academic tasks. The IEP team determines that Carlos's 1:1 paraeducator is not necessary during 21CCLC programming for Carlos to have an equal opportunity for participation. The 1:1 paraeducator need not be provided during Carlos's 21CCLC participation.

4. Darla has an IEP that provides for a 1:1 paraeducator to assist with health and behavioral needs. The IEP team determines that Darla needs the 1:1 para-educator to participate in 21CCLC programming. The 1:1 paraeducator must be provided to afford Darla an equal opportunity for participation in 21CCLC programming.

5. Erik has an IEP because of and has been diagnosed with an emotional disturbance. Participation in the afterschool program has been written into the IEP. During an attempt to participate in 21CCLC programming in which all anticipated IEP supplementary aids and

services were documented, provided, and implemented (including a specially trained 1:1 para-educator), Erik injured a staff member and two other students. In this case, Erik's participation in 21CCLC programming must be reviewed by his IEP team to determine contributing factors to the incident, whether his behaviors were a result of his diagnosed disability, whether the identified supplementary aids and services were appropriate and/or sufficient to support Erik in the 21st CCLC environment, and whether future participation is appropriate. During the review period, his removal from the program is appropriate and may be maintained if there is an imminent threat to staff and other students.

The United States Department of Education has released recent guidance documents that provide more detail on the intersections of Section 504, the IDEA, and the Americans with Disabilities Act with 21CCLC programs. That guidance is very useful and available at:

[Inclusion in 21st CCLC Environments](#)

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